

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

FAVIS CLAY MARTIN,)
)
)
Movant,)
)
)
v.) No. 4:09CV680 DJS
)
)
UNITED STATES OF AMERICA,)
)
)
Respondent.)

MEMORANDUM AND ORDER

This matter is before the Court on movant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. The motion is successive, and the Court will summarily deny it.

In 1981, this Court convicted movant of two counts of mailing threatening communications in violation of 18 U.S.C. § 876; the Court sentenced movant to two concurrent five year terms of imprisonment, to run consecutive to his Texas conviction. See United States v. Martin, 4:81CR48 DJS (E.D. Mo.). In June 1983, the Court reduced movant's sentences to two concurrent terms of four-and-one-half years' imprisonment, to run consecutive to his Texas conviction.

In the instant motion, movant contends that his due process and ex post facto rights under the Constitution have been violated. Movant states, “from 1981 to 2009 laws have changed thus causing ex post facto.”

Movant previously filed three similar motions in this Court. See Martin v. United States, 4:03CV797 DJS (E.D. Mo.); Martin v. United States, 4:00CV2049 DJS (E.D. Mo.); Martin v. United States, 4:99CV1225 DJS (E.D. Mo.). The motions were all denied.

Under 28 U.S.C. § 2255:

A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain--

- (1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or
- (2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

Absent certification from the United States Court of Appeals, this Court lacks authority under § 2255 to grant movant's requested relief. As a result, the motion shall be dismissed.

Accordingly,

IT IS HEREBY ORDERED that movant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 is **DENIED**.

An Order of Dismissal shall accompany this Memorandum and Order.

Dated this 6th Day of May, 2009.

/s/Donald J. Stohr

UNITED STATES DISTRICT JUDGE